

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D. C. 20554**

**IN THE MATTER OF:**

**BellSouth Emergency Petition for  
Declaratory Rule and Preemption  
of State Action**

)  
)  
)  
)  
)

**WC Docket No. 04-245**

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**OPPOSITION OF THE TENNESSEE REGULATORY AUTHORITY  
TO BELL SOUTH'S EMERGENCY PETITION**

**EXHIBITS**

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**BOULT • CUMMINGS  
CONNERS • BERRY PLC**

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2003 AUG 4 PM 4:22

Henry Walker  
(615) 252-2363  
Fax: (615) 252-6383  
Email: hwalker@boultcummings.com

August 4, 2003  
T.R.A. DOCKET ROOM

Deborah Taylor, Tate Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243

Re: *Petition for Arbitration of ITC DeltaCom Communications, Inc. with BellSouth  
Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996  
Docket No. 03-00119*

Dear Chairman Tate:

Please accept for filing in the above-captioned proceeding the original and fourteen  
copies of Direct Testimony of the following on behalf of ITC^DeltaCom:

Joseph Gillan,  
Don J. Wood  
Mary Conquest  
Jerry Watts  
Steve Brownworth

I have enclosed an additional copy to be stamped "filed." I appreciate your assistance in  
this matter.

Respectfully submitted,

**BOULT, CUMMINGS, CONNERS & BERRY, PLC**

By: 

Henry Walker  
414 Union Street, Suite 1600  
P.O. Box 198062  
Nashville, Tennessee 37219  
(615) 252-2363

HW/pp  
Encl.

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103062-001  
8/4/2003

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**EXHIBIT**

**BEFORE THE  
TENNESSEE REGULATORY AUTHORITY**

**In the Matter of:**

**Petition for Arbitration of ITC^DeltaCom  
Communications, Inc. with BellSouth  
Telecommunications, Inc. Pursuant to  
Telecommunications Act of 1996**

§  
§  
§  
§  
§  
§

**Docket No. 03-00119**

**DIRECT TESTIMONY OF  
JOSEPH GILLAN  
ON BEHALF OF  
ITC^DELTACOM COMMUNICATIONS, INC.**

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**August 4, 2003**

**Direct Testimony of Joseph Gillan  
On Behalf of ITC^DeltaCom  
Docket No. 03-00119**

1                   4,000% (non-recurring). When asked by ITC^DeltaCom to justify such  
2                   absurd increases, BellSouth's response is that it cannot "locate anyone  
3                   with knowledge" or "locate any workpapers or documents that may have  
4                   existed or been used" to determine these prices. Not only should  
5                   BellSouth be refused approval of these rates on a going-forward basis, but  
6                   the Authority should also find that BellSouth may not apply these unjust  
7                   and unreasonable rates in arrears.<sup>3</sup>  
8

- 9                   5.       There is already an Authority-approved, just and reasonable rate for local  
10                  switching in Tennessee – the current rate of \$1.89 per port. This rate is  
11                  now three-years old. The Georgia Commission most recently reviewed  
12                  BellSouth's switching costs (which are essentially regional, and not state-  
13                  specific) and determined that the current cost for unbundled local  
14                  switching is \$0.90 per port. As a result, the existing UNE port rate for  
15                  unbundled local switching in Tennessee already produces excess margins  
16                  nearly 100% above cost.  
17

18                I recommend that the Authority reject BellSouth's proposed local switching rates  
19                (both recurring and non-recurring) for lines subject to the 3-Line Rule with a  
20                finding that these prices are unjust and unreasonable (and always have been). The  
21                existing UNE rates established by the Authority should remain in effect for all  
22                analog switch ports as the only rates that the Authority has determined are just  
23                and reasonable to date.<sup>4</sup> To the extent that BellSouth seeks to impose *different*  
24                just and reasonable rates on a particular network element, then it should be  
25                required to propose such rates in a separate proceeding (open to all CLECs), fully

---

<sup>3</sup>       It is my understanding that BellSouth has only recently developed manual systems capable of billing these charges.

<sup>4</sup>       Section 252(d)(1) of the Telecommunications Act of 1996 requires state commissions to establish rates for unbundled network elements that are "just and reasonable." Therefore, the cost-based UNE rates are defined as just and reasonable rates by the statute.



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2003 AUG -4 PM 10:25

**BellSouth Telecommunications, Inc.**

333 Commerce Street  
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Nashville, TN 37201-3300

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**Guy M. Hicks**  
General Counsel

615 214 6301  
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T.R.A. DOCKET ROOM  
August 4, 2003

**VIA HAND DELIVERY**

Hon. Deborah Taylor Tate, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

Re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with  
BellSouth Telecommunications, Inc. Pursuant to the  
Telecommunications Act of 1996  
Docket No. 03-00119

Dear Chairman Tate:

Enclosed are the original and fourteen copies of direct testimony being filed on  
behalf of BellSouth by the following witnesses:

Kathy Blake ✓  
Ronald M. Pate ✓

W. Keith Milner  
John Ruscilli

The exhibit to Mr. Milner's testimony is proprietary and will be filed under  
separate cover pursuant to the Protective Order entered in this matter. Copies of the  
enclosed are being provided to counsel of record.

Very truly yours,

Guy M. Hicks

GMH:ch

## CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2003, a copy of the foregoing document was served on the parties of record, via the method indicated:

- ☐ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight
- ☒ Electronic

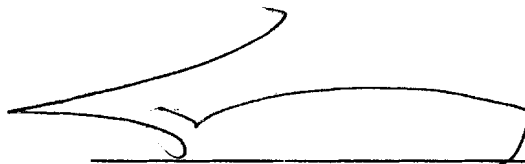
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RECEIVED  
JUL 10 2003

BELLSOUTH TELECOMMUNICATIONS, INC.  
DIRECT TESTIMONY OF KATHY K. BLAKE  
BEFORE THE TENNESSEE REGULATORY AUTHORITY

DOCKET NO. 03-00119

AUGUST 4, 2003

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR BUSINESS ADDRESS.

A. My name is Kathy K. Blake. I am employed by BellSouth as Director – Policy Implementation for the nine-state BellSouth region. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND AND EXPERIENCE.

A. I graduated from Florida State University in 1981 with a Bachelor of Science degree in Business Management. After graduation I began employment with Southern Bell as a Supervisor in the Customer Services Organization in Miami, Florida. In 1982, I moved to Atlanta where I held various positions involving Staff Support, Product Management, Negotiations, and Market Management within the BellSouth Customer Services and Interconnection Services Organizations. In 1997, I moved into the State Regulatory Organization with various responsibilities for testimony preparation, witness

1 ultimately reflect in its written Triennial Review Order. In fact, it is unclear  
2 which issues will be addressed and resolved solely by the FCC and which  
3 issues will be relegated or delegated to state commissions to resolve. At the  
4 time the ruling body's (FCC or state commission) order becomes effective, the  
5 change of law provisions in the interconnection agreement will allow the  
6 interconnection agreement to be revised accordingly. In addition, BellSouth  
7 reserves the right to supplement its testimony following the issuance of the  
8 FCC's written Triennial Review Order.

9  
10 ***Issue 26: Local Switching – Line Cap and Other Restrictions (Attachment 2 –***  
11 ***Sections 10.1.3.2 and 10.1.2):***

- 12 ***(a) Is the line cap on local switching in certain designated MSAs only for a***  
13 ***particular customer at a particular location?***  
14 ***(b) Should the Agreement include language that prevents BellSouth from***  
15 ***imposing restrictions on DeltaCom's use of local switching?***  
16 ***(c) Is BellSouth required to provide local switching at market rates where***  
17 ***BellSouth is not required to provide local switching as a UNE? If so, what***  
18 ***should be the market rate?***

19  
20 Q. WHAT IS BELL SOUTH'S POSITION ON THESE ISSUES?

- 21  
22 A. (a) When a particular customer has four or more lines within a specific  
23 geographic area, even if those lines are spread over multiple locations,  
24 BellSouth is not obligated to provide unbundled local circuit switching as long  
25 as the other criteria in FCC Rule 51.319(c)(2) are met.



1  
2 (b) No, the interconnection agreement should not include language that  
3 prevents BellSouth from imposing restrictions on DeltaCom's use of local  
4 switching. The current FCC rules impose restrictions on DeltaCom's use of  
5 local switching and set forth the specific criteria under which BellSouth can  
6 avail itself of the local switching exemption. These rules should continue to  
7 apply unless and until they are lawfully amended by the FCC. BellSouth  
8 reserves the right to supplement its testimony following the issuance of the  
9 FCC's written Triennial Review Order.  
10

11 (c) BellSouth will provide local switching at market-based rates where  
12 BellSouth is not required to unbundle local switching. The appropriateness of  
13 BellSouth's rates for providing local switching where it is not required by the  
14 Telecommunications Act of 1996 ("the Act") or the FCC's Rules  
15 implementing the Act are not governed by §§ 251 or 252 of the Act and,  
16 accordingly, it is not appropriate to address this matter in an arbitration  
17 proceeding.  
18

19 Q. HAS THE AUTHORITY PREVIOUSLY ADDRESSED THE  
20 APPLICATION OF THE LINE CAP ON LOCAL SWITCHING (ISSUE  
21 26A)?  
22

23 A. Yes. In its decision in the BellSouth/AT&T arbitration proceeding, the  
24 Authority voted to "permit BellSouth to aggregate lines provided to multiple  
25 locations of a single customer to determine compliance with FCC Rule

BEFORE THE TENNESSEE REGULATORY AUTHORITY

IN RE: )  
 )  
 PETITION FOR ARBITRATION OF ) Docket No.  
 ITC DELTACOM COMMUNICATIONS, ) 03-00119  
 INC., WITH BELL SOUTH )  
 TELECOMMUNICATIONS, INC., )

TRANSCRIPT OF PROCEEDINGS

Wednesday, August 27, 2003

APPEARANCES:

For ITC DeltaCom:	Mr. Henry Walker
	Ms. Nanette Edwards
	Mr. David Adelman
	Mr. Clay Jones
For BellSouth:	Mr. Guy Hicks
	Ms. Joelle Phillips
	Mr. E. Earl Edenfield
For TRA Staff:	Mr. Carsie Mundy
	Mr. Joe Werner

Reported By:  
 Carol A. Nichols, RDR, CRR, CCR

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1 what I thought was Director Tate's motion, which would  
2 be to deny their motion and move forward but allow for  
3 the parties to supplement by way of briefs or affidavit  
4 or entertain any other creative, I think was the word  
5 you used, manner or process in which the parties might  
6 want to come in and provide you further information  
7 directly on the TRO.

8 DIRECTOR JONES: So that we can be  
9 completely clear, it's my understanding that with  
10 respect to issue 26 that subparts B and C were resolved  
11 and they've been removed from this arbitration.

12 MR. ADELMAN: I'm glad you brought that  
13 up. They were not resolved, but we're trying to put  
14 together a process for you, and we had initially said,  
15 Well, we can just hold those out, but we don't want to  
16 hold out all of issue 26 because we can't even agree to  
17 hold that issue out. There is great dispute on issue  
18 26, especially with record to a rate that BellSouth  
19 wants to include in our contract.

20 And that contract will control the  
21 relationship between these parties until some undefined,  
22 indefinite time when you might make another decision  
23 here. It's very important to us. It's an open issue,  
24 and we need to present evidence to you and ask you to  
25 decide the dispute between the parties, at a minimum,

1 controlling the interim period until there might be some  
2 other decision.

3 DIRECTOR JONES: Let me ask it a  
4 different way then. Are subparts B and C of issue 26 a  
5 part of this arbitration?

6 MR. ADELMAN: We've agreed -- they're  
7 in the petition. They're not resolved between the  
8 parties, but as a result of the good work of your  
9 hearing officer, we've agreed to carve those out, if you  
10 will.

11 DIRECTOR JONES: Is that yes or no?

12 MR. ADELMAN: That is it depends, but  
13 we do not intend to present evidence at this part of the  
14 arbitration here, so it's not for this week. It is an  
15 open issue between these parties. I just don't want you  
16 to think we've settled those issues, and that's why I'm  
17 reluctant to say yes or no. We have not settled those  
18 issues.

19 DIRECTOR JONES: Well, we're sitting  
20 here as the arbitrators, and my question goes to, are  
21 those issues, those subparts, part of what we need to  
22 arbitrate?

23 MR. ADELMAN: No.

24 MR. EDENFIELD: Let me jump in.

25 MR. ADELMAN: The answer is no.

1                   MR. EDENFIELD: The answer to that  
2 question is no. My understanding is that during this  
3 discussion we've had over the last couple of days, those  
4 two subparts of issue 26, DeltaCom agreed to defer those  
5 to the triennial review proceeding. And that's why  
6 they're not here. Now while they would have a position  
7 on some issues and they would defer in others, I guess  
8 we'll have to leave that.

9                   MR. ADELMAN: I'll be glad to respond  
10 to that because I think it requires a response. We  
11 don't need terms and conditions on 26B and C to govern  
12 us in the interim. We do on the other issues.

13                  CHAIRMAN TATE: Could I rein us back in  
14 for just a moment? I would suggest that we take a  
15 recess and you-all discuss only what we originally began  
16 discussing, and that was how -- if we were going to  
17 proceed today and my motion and if you-all could come to  
18 some agreement on that. We haven't even had the  
19 prearbitration officer's report presented, nor accepted  
20 that yet.

21                  At this point all the issues that  
22 you-all haven't agreed on are before us. So if we  
23 could, why don't we take 15 minutes? Would that give  
24 you-all sufficient time? And then let's come back and  
25 let's deal with this preliminary motion to see if we're

1 moving forward.

2 DIRECTOR JONES: I'm sorry. On behalf  
3 of Mr. Adelman, I don't believe the chairman's motion  
4 suggested that we would hold in abeyance these TRO  
5 issues indefinitely. In fact, that would not be my  
6 expectation at all. So I just want you to keep that in  
7 mind when we break.

8 CHAIRMAN TATE: Yes. When I was saying  
9 that, I wasn't suggesting a date. It wasn't like a date  
10 way out there. It was just that I don't know what to  
11 suggest. Do I suggest 30 plus five days and then that  
12 date ends up being wrong as I find often occurs here?  
13 So I was just trying to give us some parameter but  
14 because we don't know a precise date, I did not mean in  
15 any way -- and I'm glad that Director Jones said that.  
16 So with that said, we'll be back at 10:15. Thank you.

17 (Recess taken.)

18 CHAIRMAN TATE: Thank you. We'll come  
19 back to order regarding the arbitration proceeding. Mr.  
20 Adelman?

21 MR. ADELMAN: Thank you, Madame  
22 Director. We appreciate the opportunity to take that  
23 break for a few minutes, and I think it was very  
24 productive. The parties have worked cooperatively, as  
25 we have in other states, and we have a proposal we'd



1 like to bring to you for your consideration. I'll try  
2 to succinctly describe it.

3           The parties would like to proceed with  
4 all the witnesses on all of the open issues, including  
5 26B and C, based on the filings and the prefiled  
6 testimony that has been made, so without consideration  
7 of the triennial review order. In some instances,  
8 witness made very general references in their prefiled  
9 testimony to what was then an anticipated release of the  
10 triennial review order.

11           And there is, I suppose, kind of a  
12 gentleman's understanding that there may be some general  
13 references, but those would never exceed the scope of  
14 the reference in the prefiled testimony, that at the  
15 conclusion of the evidentiary presentations over the  
16 next couple of days, the parties would come to the three  
17 of you and suggest a process for what might or might not  
18 be a desire to supplement or add to the record, whether  
19 it be through briefs, affidavits, as suggested, an  
20 additional hearing, second phase of this hearing  
21 perhaps, but we'd like to sort of see how it goes, and  
22 we may or may not want to even suggest another phase  
23 other than the traditional post-hearing briefs.

24           I don't know, Mr. Edenfield, if you  
25 have anything you want to add to that description.

1                   MR. EDENFIELD: I think that sums it up  
2 exactly right.

3                   CHAIRMAN TATE: Well, thank you all.  
4 Do my fellow directors have questions?

5                   DIRECTOR JONES: I have no objection to  
6 that agreement.

7                   DIRECTOR MILLER: Would you give me one  
8 second? Madame Chairman, I'm in agreement that we  
9 proceed as suggested by the parties.

10                  CHAIRMAN TATE: I want to thank you all  
11 very much, and I think that was a productive 15 or so  
12 moments. So if that's the case, then we will move  
13 ahead.

14                  DIRECTOR JONES: Mr. Edenfield, based  
15 on that agreement, is BellSouth withdrawing its motion?

16                  MR. EDENFIELD: Yes, sir.

17                  DIRECTOR JONES: Thank you, sir.

18                  CHAIRMAN TATE: Rather than have the  
19 prearbitration officer present anything, I think that we  
20 would just accept his report as modified by the  
21 agreement of the parties and our acceptance of that  
22 agreement, if you-all would agree.

23                  DIRECTOR JONES: I agree.

24                  DIRECTOR MILLER: I agree.

25                  CHAIRMAN TATE: And then I think I was

BEFORE THE TENNESSEE REGULATORY AUTHORITY

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INC., PURSUANT TO THE )  
TELECOMMUNICATIONS ACT OF 1996. )

---

TRANSCRIPT OF PROCEEDINGS

Monday, January 12, 2004

---

APPEARANCES:

For BellSouth: Mr. Guy M. Hicks  
Mr. E. Earl Edenfield, Jr.  
(by telephone)

For ITC DeltaCom: Mr. Henry Walker  
Ms. Nanette S. Edwards

For TRA Staff: Mr. Carsie Mundy  
Mr. Joe Werner  
Ms. Darlene Standley

Reported By:  
Cheryl Buckelew Smith, RPR

1 comments. We will move to Issue 26, local switching,  
2 line cap, and other restrictions. I believe that the  
3 language regarding the four-line carve out per customer  
4 was previously addressed by this Authority in the AT&T  
5 arbitration in which the Authority permitted BellSouth  
6 to aggregate lines provided to multiple locations of a  
7 single customer. Further, the TRO states that the  
8 four-line carve out will continue at least until the  
9 TRO proceeding is complete.

10 I believe the proposed language from  
11 DeltaCom attempts to thwart prevailing rules. The FCC  
12 rules, particularly in the TRO, specify how and when an  
13 ILEC may restrict the use of local switching.  
14 DeltaCom's proposed language does not reference state  
15 or federal rules or proceedings.

16 I'm of the opinion that this docket  
17 does not have enough information in order to determine  
18 what an appropriate rate for switching should be. I do  
19 believe that BellSouth's proposed rate of \$14 is  
20 arbitrary since BellSouth cannot support or justify  
21 that rate as just and reasonable as required by FCC  
22 rules. However, I cannot support a UNE rate as  
23 advocated by DeltaCom since by law and in this instance  
24 switching is not a UNE, and it would be not a rational  
25 interpretation of the FCC rules to price non-UNE

1 network elements the same as UNEs at TELRIC.

2 I, therefore, would move that the  
3 four-line carve out per customer should continue until  
4 otherwise determined by the Authority in Docket  
5 No. 03-00491 and reflect the previous ruling of this  
6 Authority in the AT&T arbitration, Docket No. 00-00079.  
7 The agreement should not include language that prevents  
8 BellSouth from imposing restrictions on DeltaCom's use  
9 of local switching. BellSouth is to provide local  
10 switching at market rates where BellSouth is not  
11 required to provide local switching as a UNE.

12 And BellSouth and DeltaCom should be  
13 ordered to submit final best offers within 20 days --  
14 actually, since I suggested two weeks previously, let  
15 me change my motion to say within two weeks as to the  
16 appropriate interim rate for analog switching when  
17 BellSouth is not required to provide such switching as  
18 a UNE at TELRIC rates.

19 DIRECTOR JONES: I agree with  
20 everything in your motion with the exception of the  
21 four-line carve out. In July of 2002, the FCC  
22 clarified its own rule to identify that that four-line  
23 carve out applies on a per location basis. That  
24 Authority ruling in that docket was made prior to this  
25 ruling by the FCC in DA 02-1731. But now that the FCC

BEFORE THE TENNESSEE REGULATORY AUTHORITY

IN RE: )  
 )  
PETITION FOR ARBITRATION OF ) DOCKET NO.  
ITC DELTACOM COMMUNICATIONS, INC., ) 03-00119  
WITH BELL SOUTH TELECOMMUNICATIONS, )  
INC., PURSUANT TO THE )  
TELECOMMUNICATIONS ACT OF 1996. )

---

TRANSCRIPT OF PROCEEDINGS

Monday, January 12, 2004

---

APPEARANCES:

For BellSouth: Mr. Guy M. Hicks  
Mr. E. Earl Edenfield, Jr.  
(by telephone)

For ITC DeltaCom: Mr. Henry Walker  
Ms. Nanette S. Edwards

For TRA Staff: Mr. Carsie Mundy  
Mr. Joe Werner  
Ms. Darlene Standley

Reported By:  
Cheryl Buckelew Smith, RPR

1                   DIRECTOR JONES: Well, let's see if we  
2 can make it work first. Do you have any idea how long  
3 that would take BellSouth, Mr. Hicks?

4                   DIRECTOR MILLER: If we could have  
5 both parties come forward.

6                   DIRECTOR JONES: And Mr. Walker; I'm  
7 sorry.

8                   CHAIRMAN TATE: And please identify  
9 yourselves for the record.

10                  MR. HICKS: Guy Hicks on behalf of  
11 BellSouth Telecommunications. Good afternoon.

12                  Director Jones, I really don't. I can  
13 find out probably pretty quickly how long it would take  
14 to develop the information. But as I sit here today, I  
15 really don't know. You're correct. In the brief we  
16 did say that if the Authority's inclined to order  
17 BellSouth to provide the service, that DeltaCom should  
18 be required to pay for it including the cost required  
19 for the manual intervention of the databases. So your  
20 recollection is correct, but I can't give you a firm  
21 answer this afternoon.

22                  DIRECTOR JONES: Let me ask  
23 Mr. Walker, after BellSouth develops its cost data, how  
24 much time do you need to review that? Or if your  
25 position is that the functionality already exists and

1 they're already recovering, then, of course, you will  
2 respond in that manner as well.

3 MR. WALKER: Henry Walker and Nanette  
4 Edwards here on behalf of ITC DeltaCom.

5 Ten days, Director Jones, would be  
6 sufficient for either response.

7 DIRECTOR JONES: Ten days after you  
8 receive it from BellSouth?

9 MR. WALKER: Yes, sir.

10 DIRECTOR JONES: And not knowing when  
11 BellSouth can have the information available, we can't  
12 set a date here.

13 Mr. Hicks, is that information that  
14 would be difficult to acquire from your client?

15 MR. HICKS: I really don't know,  
16 Director Jones, but I can ask them right away as soon  
17 as this afternoon and then submit a letter that would  
18 be acceptable to the arbitrators proposing a time frame  
19 and copy Ms. Edwards and Mr. Walker to see if they  
20 would be agreeable.

21 DIRECTOR MILLER: How about I move  
22 that we put this issue in abeyance and have the Chair  
23 adopt a schedule after she's heard from the parties so  
24 she can act on our behalves? So we will authorize her  
25 to act on our behalf to setting up a schedule.



BEFORE THE TENNESSEE REGULATORY AUTHORITY

IN RE: )  
 )  
 PETITION FOR ARBITRATION OF ) Docket No.  
 ITC DELTACOM COMMUNICATIONS, INC., ) 03-00119  
 WITH BELL SOUTH TELECOMMUNICATIONS, INC.)

TRANSCRIPT OF PROCEEDINGS

Monday, March 22, 2004

APPEARANCES:

For BellSouth: Mr. Guy M. Hicks  
 Mr. E. Earl Edenfield,  
 (by telephone)

For ITC DeltaCom: Mr. Henry Walker

Reported By:  
 Christina M. Rhodes, RPR, CCR

1                   MR. EDENFIELD: Hello. This is Kip  
2 Edenfield for BellSouth.

3                   CHAIRMAN TATE: Thank you. I had just  
4 invited the parties to come forward and identify  
5 themselves for the record. I just had a question about  
6 the March 22nd letter that we had received from  
7 BellSouth and was not sure whether Mr. Hicks or you  
8 would be addressing that.

9                   And, Mr. Walker, if you would like to  
10 identify yourself.

11                  MR. WALKER: Henry Walker here on  
12 behalf of ITC DeltaCom.

13                  CHAIRMAN TATE: Is Ms. Edwards  
14 participating?

15                  MR. WALKER: She is available if we  
16 need her for technical assistance.

17                  CHAIRMAN TATE: I guess just as a  
18 preliminary matter before we get started with the final  
19 best offers, Mr. Hicks, BellSouth had filed a letter  
20 requesting a brief delay in consideration of  
21 Arbitration Issue No. 26 related to the market rate for  
22 switching, and I just wondered if you had any comments  
23 about that, and also to ask Mr. Walker if he had  
24 anything he would like to say?

25                  MR. HICKS: Thank you, Chairman Tate.

1 As we stated in our letter, we would respectfully ask  
2 that the arbitrators just defer ruling on Issue 26  
3 until the next conference because BellSouth is about to  
4 announce, consistent with Chairman Powell's request, a  
5 proposal that would be the basis for negotiations that  
6 could impact this issue.

7 We don't want to delay things  
8 unnecessarily but think that in light of all that's  
9 happened with the TRO and the D.C. Circuit Court's  
10 decision and Chairman Powell's request that carriers  
11 try to commence negotiations on these issues, that that  
12 be given some opportunity to work to see if something  
13 can be worked out, which would mean that you would not  
14 have to make a ruling on that issue if it could be  
15 worked out.

16 CHAIRMAN TATE: Thank you.

17 Mr. Walker?

18 MR. WALKER: We filed a brief  
19 response. I don't know if you had time to see it or  
20 not. We're opposed to any further delay. The case has  
21 been going on for more than a year. The hearings  
22 themselves were conducted more than six months ago. We  
23 think it's time to go ahead and make a decision on all  
24 the remaining issues.

25 I would just like to make two points.

BEFORE THE TENNESSEE REGULATORY AUTHORITY

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TRANSCRIPT OF PROCEEDINGS

Monday, April 12, 2004

APPEARANCES:

For BellSouth: Ms. Joelle Phillips

For ITC DeltaCom: Mr. Henry Walker

Reported By:  
Christina M. Rhodes, RPR, CCR

1 dynamic -- the pressure to settle is radically changed.

2           And we are currently trying to  
3 negotiate exactly what you're set to rule on. We made  
4 legal arguments already about whether the TRA or the  
5 FCC has jurisdiction, about whether cost is an  
6 appropriate thing to even think about when you set  
7 something that's supposed to be a market rate, but  
8 obviously -- and obviously we think we're right and  
9 DeltaCom is wrong, but what we're really here today to  
10 do is just simply offer another plea -- a practical  
11 reality-based plea that you not release the pressure  
12 yet and that you give us a chance to see what might  
13 happen if we continue to negotiate. No matter who  
14 wins, that pressure is going to be altered if a rate is  
15 set by the Authority.

16           I think all of you have seen by now  
17 the April 6th letter from Mr. Ackerman to the FCC. I  
18 think we filed a copy of it. And if you needed any  
19 better indication of what a unique situation we're in  
20 right now, I think that letter is really a remarkable  
21 thing when you think about corporate realities. Here  
22 is a CEO who has led his company through years of  
23 arduous, expensive, time-consuming regulatory effort at  
24 the FCC and then a legal battle with the FCC all to  
25 challenge rules that Mr. Ackerman has been very vocal

BEFORE THE TENNESSEE REGULATORY AUTHORITY

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TRANSCRIPT OF PROCEEDINGS

Monday, April 12, 2004

APPEARANCES:

For BellSouth: Ms. Joelle Phillips  
For ITC DeltaCom: Mr. Henry Walker

Reported By:  
Christina M. Rhodes, RPR, CCR

1 pick the first available conference after that date --  
2 one way or the other a decision would be made -- if  
3 that would be acceptable.

4 DIRECTOR MILLER: Can somebody check a  
5 calendar?

6 MS. WOODRUFF: June 15th is a Tuesday.

7 CHAIRMAN TATE: Well, and we'll be at  
8 SEARUC I know I think it's the week before that, so I'm  
9 not sure if there's a conference that next Monday.

10 DIRECTOR MILLER: We don't have to do  
11 it on a conference day, do we?

12 DIRECTOR JONES: No. We could do it  
13 that week, sure.

14 CHAIRMAN TATE: If there's no problem,  
15 then we'll just send out a notice.

16 DIRECTOR MILLER: No. Let's set a  
17 date. Let's set a firm date. Let's take a five-minute  
18 recess and get a calendar.

19 (Recess taken from 3:01 p.m.  
20 to 3:04 p.m.)

21 CHAIRMAN TATE: We'll be back on the  
22 record. Director Jones?

23 DIRECTOR JONES: I would move that we  
24 defer a decision on Issue 26 on the final best offers  
25 until 45 days after the 60-day stay of the D.C. court's

1 mandate, which will be June 15th, and that this  
2 arbitration panel arbitrate this final issue on  
3 June 21st after the Authority conference, and I so  
4 move.

5 CHAIRMAN TATE: I second.

6 DIRECTOR MILLER: I vote aye, and  
7 we'll also have a response from ITC DeltaCom to -- on  
8 Monday of next week.

9 DIRECTOR JONES: Thank you. I agree  
10 with that.

11 CHAIRMAN TATE: I would agree, and  
12 we're adjourned. Thank you.

13 (Proceedings concluded at  
14 3:06 p.m.)

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